FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D21-3413

LISA WHITLOW,

Appellant,

v.

TALLAHASSEE MEMORIAL HEALTHCARE, INC.,

Appellee.

CORRECTED PAGE: 12
CORRECTION: Four dots removed from block quote.
MAILED: 8/25/23
BY: KS

On appeal from the Circuit Court for Leon County.
J. Layne Smith, Judge.

August 16, 2023

TANENBAUM, J.

While visiting her father at Tallahassee Memorial Hospital (TMH) in August 2019, Lisa Whitlow slipped on some liquid as she exited an elevator on the ground floor. She fell and sustained injuries that required her to be hospitalized. Whitlow sued for damages, alleging that TMH had been negligent in failing to maintain its premises. Her theory has been that she slipped on water left there by a stretcher pushed out of the elevator by TMH employees immediately before she entered. The trial court granted TMH's motion for summary judgment and dismissed the suit.

Section 768.0755(1), Florida Statutes, requires Whitlow, who claims to have slipped because of a "transitory foreign substance,"

to prove that TMH had "knowledge of the dangerous condition and should have taken action to remedy it." Upon our review of the record, we see that she failed to present substantive evidence from which a jury reasonably could infer that the TMH employees knew of the dripping water (knowledge that would have been attributable to TMH), or that the employees could have done anything to correct the unsafe condition in the short time that passed between the stretcher coming off the elevator and her getting on. To defeat summary judgment and have a jury decide her case, Whitlow had to come forward with evidence that could lead a rational jury to find in her favor. Whitlow contends that it was enough that she presented eyewitness testimony that a TMH employee caused the dangerous condition. Under the circumstances of this case, it was not, and we affirm.

I

Before we get to the analysis of the legal issue at hand, we note the significant consequences for a plaintiff that stem from an adverse summary judgment. Here we have an individual plaintiff who, as she no doubt sees it, has pleaded her negligence cause of action entitling her to relief, and she has produced witnesses that will testify to her view of the facts. Alas, she still does not get her proverbial "day in court," where a jury can consider her evidence. In Florida, after all, her "right of trial by jury shall be secure to all and remain inviolate." Art. I, § 22, Fla. Const.

Reverence for the idea of trial by jury has ancient roots indeed. Blackstone devotes a whole chapter in his Commentaries to praising the jury trial, proclaiming it as the "glory of the English law" that "preserve[d] in the hands of the people that share which they ought to have in the administration of public justice." 3 WILLIAM BLACKSTONE, COMMENTARIES 379–80. Though possibly less famous than other grievances submitted to the English Crown in the Declaration of Independence, deprivation of trial by jury still earned a mention in the colonists' list of injuries. *See* DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776). This point is pertinent to this discussion in that grievance came in response to the king's use of his courts in the colonies as a substitute for trial by juries of fellow colonists. *See Waring v. Clarke*, 46 U.S. 441, 484 (1847) (citing John Jay's address to the First Continental Congress in

1774 complaining of colonists being tried "in the courts of admiralty; by which means the subject lost the advantage of being tried by an honest, uninfluenced jury of the vicinage, and was subjected to the sad necessity of being judged by a single man, []a creature of the crown" (emphasis omitted)); *C.J. Hendry Co. v. Moore*, 318 U.S. 133, 141 (1943) ("The rise of the vice-admiralty courts–prompted in part by the Crown's desire to have access to a forum not controlled by the obstinate resistance of American juries..."). To guard against the new federal government's engaging in the same practice, the people enshrined a right to trial by jury in their Bill of Rights. *See* U.S. Const. amend. VII ("In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.").

The right secured by the Seventh Amendment was not some abstract concept; the jury trial it guaranteed was the one available at the ancient English common law. *See Slocum v. N.Y. Life Ins. Co.*, 228 U.S. 364, 377 (1913). The guarantee was an assurance to the people that the right of trial by jury, at least in federal courts, could not be done away with by legislative or judicial action. *See Galloway v. United States*, 319 U.S. 372, 398 (1943) (Black, J., dissenting) (noting that the purpose of the Sixth and Seventh amendments was "to save trial in both criminal and common law cases from legislative and judicial abridgment"). It should not come as a surprise, then, that the same purpose lies behind Florida's guarantee. *See Flint River Steamboat Co. v. Roberts*, 2 Fla. 102, 114 (1848) (noting that "inviolate" meant that the "General Assembly has no power to impair, abridge, or in any degree restrict the right of trial by jury as it existed when the Constitution went into operation").

Still—and this turns out to be a critical point—this right was a matter of substance, not one of procedure. "The Amendment did not bind the federal courts to the exact procedural incidents or details of jury trial according to the common law in 1791, any more than it tied them to the common-law system of pleading or the specific rules of evidence then prevailing." *Galloway*, 319 U.S. at 390. In other words, the constitutional guarantee of trial by jury is "designed to preserve the basic institution of jury trial in only its

most fundamental elements, not the great mass of procedural forms and details, varying even then so widely among common-law jurisdictions." *Id.* at 392. According to the Supreme Court, the federal jury-trial guarantee "does not attempt to regulate matters of pleading or practice, or to determine in what way issues shall be framed by which questions of fact are to be submitted to a jury." *Walker v. N.M. & S P R Co.,* 165 U.S. 593, 596 (1897). The aim of the guarantee "is not to preserve mere matters of form and procedure, but substance of right"; it simply "requires that *questions of fact* in common-law actions shall be settled by a jury, and that the court shall not assume, directly or indirectly, to take from the jury or to itself such prerogative." *Id.* (emphasis supplied); *see also Gasoline Prods. Co. v. Champlin Refin. Co.*, 283 U.S. 494, 498 (1931) ("All of vital significance in trial by jury is that issues of fact be submitted for determination with such instructions and guidance by the court as will afford opportunity for that consideration by the jury which was secured by the rules governing trials at common law. . . . It does not prohibit the introduction of new methods for ascertaining what facts are in issue.").

This distinction between substance and procedure left open the possibility that the legislative or judicial power could develop mechanisms of procedural expediency to weed out cases that lacked a genuine dispute over facts requiring court resolution. *Cf. Walker*, 165 U.S. at 596 ("So long as this substance of right is preserved, the procedure by which this result shall be reached is wholly within the discretion of the legislature, and the courts may not set aside any legislative provision in this respect because the form of action-the mere manner in which questions are submitted-is different from that which obtained at the common law."). A trial judge, in turn, was free to determine whether the evidence presented was sufficient to warrant a jury determination as a matter of law, provided the judge limited the assessment to the quantum of evidence and not the weight of it. *Cf. Balt. & C. Line v. Redman*, 295 U.S. 654, 659–57 (1935) (re-affirming that the Seventh Amendment protects the role of the jury as the sole determiner of questions of fact but that "[w]hether the evidence was sufficient or otherwise was a question of law to be resolved by the court"); *Galloway*, 319 U.S. at 392 (upholding use of directed verdict because "the Amendment was designed to preserve the basic institution of jury trial in only its most fundamental

elements, not the great mass of procedural forms and details, varying even then so widely among common-law jurisdictions.").

Even though Florida's constitution historically has guaranteed the right to a jury trial in terms even stronger than those used in the Seventh Amendment (*i.e.*, "remain inviolate" rather than just "preserved"), the view of this right held by Florida's supreme court closely tracked the federal view that we just described. *Cf. Hawkins v. Rellim Inv. Co.,* 110 So. 350, 351 (1926) (explaining that the right to an inviolate trial by jury "preserve[s] and guarantee[s] the right of trial by jury in proceedings, according to the course of the common law as known and practiced at the time of the adoption of the Constitution"); *State v. Parker*, 100 So. 260, 261–62 (Fla. 1924) ("Section 3 of the Declaration of Rights in our Constitution, providing that 'the right of trial by jury shall be secure to all, and remain inviolate forever,' was never intended to extend the right of jury trial, but merely secures it in the cases in which it was matter of right before the adoption of the Constitution." (emphasis omitted)); *see also Blanchard v. Raines' Ex'x*, 20 Fla. 467, 476 (1884) (explaining that the purpose of the constitutional guarantee was to ensure that "the right shall, in all cases in which it was enjoyed when the Constitution was adopted, remain unabridged by any act of legislation").

Just as the federal Supreme Court did, then, our State's supreme court historically approved procedural expediencies that ensured only genuine factual disputes went to juries for resolution. One of those expediencies was the directed verdict. Under this expediency, as long as the trial judge did not determine the "credibility and probative force of conflicting testimony," the judge was allowed to take the case from the jury without running afoul of the constitutional right, *provided* he concluded "as matter of law that no recovery can be lawfully had upon any view taken of facts that the evidence tends to establish." *Gunn v. City of Jacksonville*, 64 So. 435, 436 (Fla. 1914); *C.B. Rogers Co. v. Meinhardt*, 19 So. 878, 879 (Fla. 1896) (explaining why statutory provision allowing for directed verdicts has not "in any respect curtailed, or attempted to curtail, the province of the jury in passing upon the facts of a case; nor has it undertaken to enlarge the powers of the court as to its determination of the facts" but noting that "[t]he duty devolving

upon the court to direct a verdict for one of the parties litigant will in many cases become one of delicacy, and the right should be cautiously exercised, in order to avoid expense and delay to which parties may be subjected"); *see also Fla. Cent. & P.R. Co. v. Williams*, 20 So. 558, 564 (Fla. 1896) (recognizing that a directed verdict may be permitted, but only if "it is clear that there is no evidence whatever adduced that could in law support a verdict"; and that an issue "should be submitted to the jury as a question of fact, and not taken from them to be passed upon by the judge as a question of law" when there is conflicting evidence, evidence that "will admit of different reasonable inferences, or "evidence tending to prove the issue"); *S. Express Co. v. Williamson*, 63 So. 433, 437 (Fla. 1913) (allowing for a trial judge's taking a case away from the jury and deciding it as a matter of law through a directed verdict, but only when "it is clear that there is no evidence whatever adduced that could in law support a verdict for the plaintiff"); *Fla. E. Coast Ry. Co. v. Hayes*, 64 So. 274, 275 (Fla. 1914) (acknowledging that a jury's conclusion as to facts should prevail rather than a judge's when "there is room for difference of opinion between reasonable men as to the existence of facts" or "as to the inferences which might be drawn from conceded facts," but allowing for a directed verdict for one party when "the evidence is such that no view which the jury may lawfully take of it favorable to the other party can be sustained"); *Atl. Coast Line R. Co. v. Pelot*, 56 So. 496, 497 (Fla. 1911) (same); *German-Am. Lumber Co. v. Brock*, 46 So. 740, 744 (Fla. 1908) (same).

Under similar reasoning, the United States Supreme Court approved of the use of summary judgment as yet another procedural expediency. *See, e.g.*, *Fid. & Deposit Co. of Md. v. United States*, 187 U.S. 315, 318–20 (1902) (determining that a rule allowing for summary judgment is not inconsistent with the right to a trial by jury because the rule simply "prescribes the means of making an issue," its purpose being "to preserve the court from frivolous defenses, and to defeat attempts to use formal pleading as means to delay the recovery of just demands"); *Ex Parte Peterson*, 253 U.S. 300, 309–10 (1920) (explaining that the Seventh Amendment, which guarantees that that "the ultimate determination of issues of fact" be by jury, "does not prohibit the introduction of new methods for determining what facts are actually in issue," such that "[n]ew devices may be used to adapt

the ancient institution to present needs and to make of it an efficient instrument in the administration of justice"). The Supreme Court later adopted a summary judgment rule formally to be applied in all federal civil cases. *See generally* Charles E. Clark & Charles U. Samenow, *The Summary Judgment*, 38 YALE L.J. 423 (1929) (discussing history of summary judgment in England, other British colonies, and several American states); *Summary Judgment—Rule 56*, 51 NW. U. L. REV. 370 (1956–1957) (discussing history of summary judgment as "pre-trial device"); Ilana Haramati, *Procedural History: The Development of Summary Judgment as Rule 56*, 5 N.Y.U. J. L. & LIBERTY 173 (2010) (same).

Our supreme court once again followed the same course, eventually adopting state rules allowing for summary determinations "patterned after Federal Rules Civil Procedure Rule 56." *Boyer v. Dye*, 51 So. 2d 727, 728 (Fla. 1951). According to the court, "[i]t is basic and fundamental that a right to a trial presupposes a real and genuine issue," and the "relatively new" rule is intended to allow the judge "reasonable latitude in determining whether there is in fact a case to be tried." *Id.* The supreme court consistently acknowledged that summary judgment, like the directed verdict, is a useful procedural tool. *See Food Fair Stores of Fla., Inc. v. Patty*, 109 So. 2d 5, 7 (Fla. 1959) (taking "note of the propriety of exercising the authority [of summary judgment] in appropriate situations as a means of expediting the disposition of baseless litigation"); *Johnson v. Studstill*, 71 So. 2d 251, 252 (Fla. 1954) ("To support summary judgment the situation must justify a directed verdict insofar as the facts are concerned." (quoting *Dewey v. Clark*, 180 F.2d 766, 772 (D.C. Cir. 1950))); *cf. Sawyer Indus. v. Advertects, Inc.*, 54 So. 2d 692, 693–94 (Fla. 1951) (explaining that the summary judgment rule "was never intended to deprive a litigant of a constitutional right of trial by jury, where such a trial was seasonably requested," and instead "simply grants the trial Court authority to hear and determine the merits of the claims of the respective parties according to the evidence and in light of the applicable law" because if "an asserted claim is without merit either in law or fact[,] nothing could be accomplished in submitting such doubtful issues to a jury"); *Connolly v. Sebeco, Inc.*, 89 So. 2d 482, 484 (Fla. 1956) (directing that a trial court not "substitute itself for a jury

and try controverted issues of fact" on summary judgment, but "if the party moved against has admitted facts which preclude him ever obtaining a judgment, or is without evidence to support a fact which he must establish to succeed, or, in the face of substantial evidence by his opponent, is without evidence to rebut a fact established by his opponent's evidence which, if true, precludes a judgment in his favor, then there is no necessity for a trial and a summary judgment is proper").

Still, the supreme court "urged caution" in the exercise of the power. *Id.*; *see Yost v. Mia. Transit Co.,* 66 So. 2d 214, 216 (Fla. 1953) ("We are fully conscious of the great benefit of the rule authorizing summary judgments in expediting litigations and we wish to foster its use, but we must at all times realize that the process is circumscribed by the guaranty of trial by jury."); *Williams v. City of Lake City*, 62 So. 2d 732, 733 (Fla. 1953) ("The right to a jury trial is a very sacred part of our system of jurisprudence and, while we have held that the granting of a summary judgment does not infringe upon such constitutional right, that very holding carries with it the idea that such judgments should be sparingly granted and only in those cases where there remains no *genuine* issue of any *material* fact."); *Navison v. Winn & Lovett Tampa, Inc.,* 92 So. 2d 531, 533 (Fla. 1957) ("This Court has repeatedly stated that Summary Judgment should only be granted where no material issue of fact is presented to the Trial Court. The Court cannot weigh the facts or reach conclusions concerning them because by so doing it would be depriving a litigant of a Jury trial which he has requested. Summary Judgment can only be granted where the facts are so crystallized that nothing remains but a question of law.").

With its recent adoption of a new summary judgment rule, the supreme court "largely replace[d] the text of existing rule 1.510 with the text of federal rule 56." *In re Amends. to Fla. Rule of Civ. Proc. 1.510*, 317 So. 3d 72, 75 (Fla. 2021). The new rule provides for a summary judgment standard that mirrors the federal standard, such that we "will now adhere to the principles established in the *Celotex* trilogy." *Id.* If we consider the history set out above, however, this change is not that remarkable. Instead, it represents a return to the procedural expediencies that the supreme court had approved over a century earlier as

complementing, rather than conflicting with, the right to a trial by jury. In adopting the federal standard, the supreme court even recognized "the fundamental similarity between the summary judgment standard and the direct verdict standard." *Id.* The supreme court essentially requires that the directed verdict standard—which it has approved for application mid-trial since the nineteenth century—now to be applied pre-trial as well. To state this another way: The trial judge now operates as a gatekeeper for use of a jury to resolve factual disputes *both* before *and* during the trial.

"One of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986). "Both standards focus on 'whether the evidence presents a sufficient disagreement to require submission to a jury." *In re Amends. to Fla. Rule of Civ. Proc. 1.510*, 317 So. 3d at 72 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251–52 (1986)). The function of the trial court at the summary judgment stage is not "to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Anderson*, 477 U.S. at 249. As the Supreme Court explains it

> [J]udges [no] longer [are] required to submit a question to a jury merely because some [scintilla of] evidence has been introduced by the party having the burden of proof. . . . [R]ecent decisions of high authority have established a more reasonable rule, that in every case, before the evidence is left to the jury, there is a preliminary question for the judge, not whether there is literally no evidence, but whether there is any upon which a jury could properly proceed to find a verdict for the party producing it, upon whom the *onus* of proof is imposed.

Anderson, 477 U.S. at 251 (quoting *Improvement Co. v. Munson*, 81 U.S. 442, 448 (1872)).

With the Florida Supreme Court's adoption of the new rule, upon the filing of a summary judgment prior to the commencement of trial in this state, it becomes incumbent on the non-movant to come forward with evidence showing a "dispute about a material fact [that] is 'genuine,'" or, in other words, demonstrate that "the

evidence is such that a reasonable jury could return a verdict for the" party opposing the motion. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The non-movant's right to a jury trial extends only to "factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." *Id.* at 250. If the trial court, upon review of the evidence produced by the party bearing the burden of proof at trial, concludes that there is no substantive evidence (rather than "merely colorable" or "not significantly probative"), from which a jury reasonably could "return a verdict for that party," then it may grant summary judgment against the party without running afoul of the constitution's jury-trial guarantee. *Id.* at 249–50.

The trial court in this case performed the gatekeeping role assigned to it by rule, and it made the legal determination that Whitlow failed to come forward with evidence that demonstrated one or more genuine disputes of *material* fact that required resolution by a jury. We review that determination *de novo*.

II

To do that, we come back to Whitlow and her negligence claim. Whitlow's complaint contends that TMH negligently maintained its premises and allowed a dangerous condition to persist without warning her or taking steps to ameliorate the condition. She seeks compensation for the damage she suffered from a slip-and-fall at TMH.

"Where a person or corporation invites a member of the public into his or its place of business, he or it owes such person a duty with respect to his safety which may vary with the circumstances of each case." *S. Express Co. v. Williamson*, 63 So. 433, 437 (Fla. 1913). The owner owes "a duty to have the place of business in a reasonably safe condition." *Id.* at 437. The "reasonable care due" from the owner is to

> maintain[] the property in a reasonably safe condition and to have given [the invitee] timely notice and warning of latent and concealed perils, known to the owners and their rental agent, or by the exercise of due care, should have been known, and which were to the appellant

> unknown or that by the exercise of due care she could not have known of the latent and concealed dangers.

Tutwiler v. I. Beverally Nalle, Inc., 12 So. 2d 163, 164 (Fla. 1943); *see also Hall v. Holland*, 47 So. 2d 889, 891 (Fla. 1950) (same). The duty imposed by law on the premises owner "is one requiring the exercise of ordinary care." *Emmons v. Baptist Hosp.*, 478 So. 2d 440, 442 (Fla. 1st DCA 1985). "Negligence will not be presumed merely because of the happening of an accident." *Clyde Bar, Inc. v. McClamma*, 10 So. 2d 916, 917 (Fla. 1942); *see Emmons*, 478 So. 2d at 442 (Fla. 1st DCA 1985) ("Of course, it is fundamental that the mere occurrence of an accident does not give rise to an inference of negligence and that the plaintiff must show that the condition complained of was an *unreasonable* hazard.").

To put it in a slightly different way, a "storekeeper is not an insurer of the safety of all those who come upon his premises. He need only exercise reasonable care to protect his patrons from harm of which he has actual or constructive notice." *Winn-Dixie Montgomery, Inc. v. Petterson*, 291 So. 2d 666, 668 (Fla. 1st DCA 1974); *see also Emmons,* 478 So. 2d at 442 (Fla. 1st DCA 1985) ("There is no duty on the part of a landowner to exercise such control over the business invitee or the premises so as to be an *insurer* of his safety."). This historical view of the standard of care dovetails with what Whitlow is statutorily mandated to prove in order to succeed on this claim: "that [TMH] had actual or constructive knowledge of the dangerous condition *and* should have taken action to remedy it." § 768.0755(1), Fla. Stat. (emphasis supplied).

Whitlow concedes on appeal that she did not present evidence that demonstrated constructive knowledge, so constructive knowledge is not part of our consideration. Instead, the claim is premised on a theory that TMH had "actual knowledge" of water on the elevator floor because TMH employees had been pushing a stretcher that exited the elevator immediately before Whitlow entered. In opposition to TMH's summary judgment motion, Whitlow submitted three affidavits—one from her and two from witnesses present with her on the elevator, *viz.*, her mom and her nephew. The three affidavits consistently stated that a stretcher came off the elevator, pushed by TMH employees, "and made way

for us" as they entered the elevator. Whitlow did not notice any water on the floor of the elevator, but her mother and nephew apparently did. According to the mom, she "noticed water on the floor of the elevator and navigated around it, but did not say anything about it to anyone else in my party because we were engaged in other conversation. . . ." All three affiants attested that there were no caution or warning signs in the elevator alerting to a wet floor. The nephew apparently noticed one more detail: "The stretcher was wet and dripping on the floor." He did not expand further.

The trial court also had Whitlow's deposition testimony before it. According to that testimony, Whitlow remembered a stretcher coming off the elevator right before she and her family stepped in. She did not remember seeing any water on the elevator floor as she rode in the elevator and did not know how the water got there. Whitlow, however, did remember taking one step out of the elevator when it reached her stop and "slipping, sliding" and falling. Her memory of the circumstances leading to the slip otherwise was hazy and derived primarily from a conversation with her mom (who was present) after the fall. It went as follows:

> Well, this is the thing, when you're with a bunch of people and you're talking and, you know, my dad is basically dying, I wasn't really thinking about -- I wasn't, you know, noticing every little detail. When I fell, my mom looked at me and she said, "There was water all over the elevator," and, I said, "Oh, my God, you're right." And she also -- her and I also talked about the stretcher at that point. She remembers specifically -- actually, we both do, but it was just kind of subconsciously remembering the stretcher and after it happened, after I was sitting on the ground, you know, after the security guard came up, and my mind started thinking, "Oh, [expletive], there was water in the elevator." It's not something I noticed right when I walked in because I wasn't looking for water to be on the ground in the elevator. I was talking to my mom about my dad dying.

Whitlow did not remember any of her clothing being wet after she fell, did not know how the water came to be in the elevator,

and did not know how long the water had been there. She "did know that it had to be there when I got on because that's how I slipped." As she spoke with her mom while Whitlow was being treated for the injuries she suffered, they had "a moment of clarity, like, what exactly happened, and we both kind of remembered at that point, 'Oh wait, the water, the stretcher,' and – because I think we both saw it, but it just wasn't something we were thinking about because we were thinking about my dad who was possibly dying."

According to Whitlow, the one statement from her nephew—that the stretcher being pushed by TMH employees was dripping water as it came off the elevator—should have been enough to defeat summary judgment. She relies primarily on the supreme court's decision in *Food Fair Stores, Inc. v. Trusell*, 131 So. 2d 730 (Fla. 1961). Whitlow zeroes in on one statement in the opinion, which explained that "when a dangerous condition of a floor of a market is created by an agent or servant of the owner, then such owner may be held liable for resulting injuries to a business invitee." *Id.* at 732. As the argument goes, essentially, her simple demonstration that the TMH employees were pushing a dripping stretcher was enough to get to a jury. She reads too much into the *Trusell* decision.

Trusell does not obviate the requirement that, when it can be shown that an employee's act caused the condition, knowledge of the dangerous condition be proven. Instead, the supreme court in *Trusell* presumed that typically, when an employee drops something that becomes a dangerous hazard, he knows that he dropped it. That knowledge, and the ensuing failure to do something about the hazard, are "chargeable against the employer and his negligent act committed in the course of his employment is binding upon the employer." *Trusell*, 131 So. 2d at 732. This principle of imputation, however, is nothing remarkable. *See Breeding's Dania Drug Co. v. Runyon*, 2 So. 2d 376, 377 (Fla. 1941). The employer naturally is responsible for those in its employ, and actions and knowledge of one its agents will be charged to it.

Under this principle, if an employee sees or knowingly causes a dangerous condition, his knowledge of the dangerous condition is imputed to the employer as actual knowledge. The key to

showing that the *employee* acted negligently regarding a dangerous condition is still knowledge of the condition. In turn, even though she showed through evidence that TMH employees were pushing a dripping stretcher off the elevator, Whitlow still needed to show that the TMH employees *knew* that the stretcher was dripping. This she failed to do. She did not present evidence that these employees were aware of the stretcher's condition or even evidence demonstrating circumstances from which one reasonably could infer that awareness. Instead, the trial court was left with one statement from the nephew: "The stretcher was wet and dripping on the floor." Without something to demonstrate knowledge on the part of the employees, there is no knowledge that can be imputed to TMH.

Whitlow had the burden to "make a showing sufficient to establish the existence [of each] element essential to [her] case, and on which [she] will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322. There can be "no genuine issue as to any material fact" for a jury to resolve if there is "a complete failure of proof concerning [any] essential element of the non[-]moving party's case." *Celotex*, 477 U.S. at 323. "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (citation omitted). Whitlow needed to "do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec.*, 475 U.S. at 586.

To defeat summary judgment, then, there must be "some alleged factual dispute between the parties" shown to be both "material" and "genuine." *Anderson*, 477 U.S. at 247, 248. Something is "material" if it relates to the substantive law. *Id.* ("[W]hile the materiality determination rests on the substantive law, it is the substantive law's identification of which facts are critical and which facts are irrelevant that governs."). A material fact dispute is "genuine" "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* While it is true that "inferences to be drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion," the burden is on the non-movant to show that any such inference "is reasonable in light of [] competing inferences."

Matsushita Elec., 475 U.S. at 587–88 (internal quotation and citation omitted).

In the end, Whitlow left an evidentiary gap regarding knowledge of the water on the floor. The record at best shows that the nephew was the only one who saw the dripping stretcher, and the mother was the only one who saw the water on the floor. There was nothing in the record to establish knowledge on the part of TMH employees that could be imputed to TMH, and there was not enough from which to reasonably infer that knowledge. No reasonable jury could find for Whitlow at trial, so summary judgment for TMH was the correct disposition.

AFFIRMED.

ROBERTS and WINOKUR, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Courtney Brewer and Jonathan Anthony Martin, of Bishop & Mills, PLLC, Tallahassee, for Appellant.

Jesse F. Suber, Halley M. Stephens, Miriam R. Coles, E. Victoria Penny, and Jacob Salow, of Henry Buchanan, P.A., Tallahassee, for Appellee.